

IMMIGRATION ACT OF 1990

OCTOBER 26, 1990.—Ordered to be printed

Mr. BROOKS, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 358]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 358) to amend the Immigration and Nationality Act to change the level, and preference system for admission, of immigrants to the United States, and to provide for administrative naturalization, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

SECTION 1. SHORT TITLE; REFERENCES IN ACT; TABLE OF CONTENTS.

(a) *SHORT TITLE.*—This Act may be cited as the “Immigration Act of 1990”.

(b) *REFERENCES IN ACT.*—Except as specifically provided in this Act, whenever in this Act an amendment or repeal is expressed as an amendment to or repeal of a provision, the reference shall be deemed to be made to the Immigration and Nationality Act.

(c) *TABLE OF CONTENTS.*—The table of contents of this Act is as follows:

Sec. 1. Short title; references in Act; table of contents.

TITLE I—IMMIGRANTS

Subtitle A—Worldwide and Per Country Levels

Sec. 101. Worldwide levels.

Sec. 102. Per country levels.

Sec. 103. Treatment of Hong Kong under per country levels.

Sec. 104. Asylee adjustments.

BONA FIDE MARRIAGE EXCEPTION

The House amendment provided a "bona fide marriage" exception to the foreign residence requirement for marriages entered into during exclusion or deportation proceedings.

The Senate bill had no comparable provision.

The Conference substitute provides for such exception, but requires the alien applicant to demonstrate by clear and convincing evidence the bona fides of the marriage, and limits the alien to one administrative review.

EXCLUSION AND DEPORTATION GROUNDS

The House amendment repealed several outmoded grounds for exclusion based on health and replaced them with a general exclusion based on a mental or physical disorder which could endanger the alien or others and a second ground based on drug abuse or addiction.

The Senate bill had no comparable provision.

The conference substitute provides for a comprehensive revision of all the existing grounds for exclusion and deportation, including the repeal of outmoded grounds, the expansion of waivers for certain grounds, the substantial revision of security and foreign policy grounds, and the consolidation of related grounds in order to make the law more rational and easy to understand.

The term in this section has been changed from "dangerous contagious diseases" to "communicable diseases of public health significance." By substituting the words "public health significance" for "dangerous," Congress intends to insure that this exclusion will apply only to those diseases for which admission of aliens with such disease would pose a public health risk to the United States.

The Secretary of Health and Human Services shall determine the content of regulations regarding the list of communicable disease of public health significance, notwithstanding previous amendments to the law or previous regulations setting forth the list of "dangerous, contagious diseases" under section 212(a)(6). Congress intends that the Secretary promulgate new regulations for the category of "communicable diseases of public health significance." A disease of public health significance means one in which admission of aliens with such disease would constitute a public health threat to the United States. Such determination shall be based on current epidemiological principles and medical standards.

Under current law there is some ambiguity as to the authority of the Executive Branch to exclude aliens on foreign policy grounds (this ambiguity is a result of the overlapping nature of the basic grounds for exclusion as set out in Section 212(a) of the Immigration and Nationality Act (INA), Section 901 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, as amended, and the "McGovern Amendment"). The foreign policy provision in this title would establish a single clear standard for foreign policy exclusions (which is designated as 212(a)(3)(C) of the INA). The conferees believe that granting an alien admission to the United States is not a sign of approval or agreement and the conferees therefore expect that, with the enactment of this provision, aliens will be excluded not merely because of the potential signal that

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EXCEPTION

"bona fide marriage" exception for marriages entered into before the provision.

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GENERAL GROUNDS

Several outmoded grounds for exclusion, such as a general exclusion order which could endanger the alien based on drug abuse or ad-

mission.

and a comprehensive revision of the grounds for exclusion, including expansion of waivers for certain security and foreign policy grounds in order to make them stand.

Excluded from "dangerous consequences of public health significance" are those that this exclusion will prevent admission of aliens with risk to the United States.

Services shall determine a list of communicable diseases and previous amendments setting forth the list of section 212(a)(6). Congress has new regulations for the category of health significance." A category in which admission would pose a public health threat shall be based on current standards.

Authority as to the authority of the foreign policy grounds and the nature of the basic exclusion standard of the Immigration and Nationality Act of 1952, as amended, and 1989, as amended, the foreign policy provision in the standard for foreign policy exclusion (C) of the INA. The conferees intend that the conferees of this provision, aliens and the potential signal that

might be sent because of their admission, but when there would be a clear negative foreign policy impact associated with their admission.

This provision would authorize the executive branch to exclude aliens for foreign policy reasons in certain circumstances. Specifically, under this provision, an alien could be excluded only if the Secretary of State has reasonable ground to believe an alien's entry or proposed activities within the United States would have potentially serious adverse foreign policy consequences. However, there are two exceptions to this general standard.

First, an alien who is an official of a foreign government or a purported government, or who is a candidate for election to a foreign government office (and who is seeking entry into the United States during the period immediately prior to the election) would not be excludable under this provision solely because of any past, current or expected beliefs, statements or associations which would be lawful in the United States. The word "solely" is used in this provision to indicate that, in cases involving government officials, the committee intends that exclusions not be based merely on, for example, the possible content of an alien's speech in this country, but that there be some clear foreign policy impact beyond the mere fact of the speech or its content, that would permit exclusion.

In particular, the conferees expect that the authority to exclude aliens with a government connection would apply primarily to senior government officials (or candidates for senior government posts). While, as a general matter, admitting foreign government officials is not necessarily a signal of approval, the conferees recognize that in cases involving senior officials it may be difficult to avoid conveying that impression.

The second exception, which applies to all other aliens, would prevent exclusion on the basis of an alien's past, current or expected beliefs, statements or associations which would be lawful within the United States unless the Secretary of State personally determines that the alien's admission to the United States would compromise a compelling United States foreign policy interest, and so certifies to the relevant Congressional Committees. It is the intent of the conference committee that this authority would be used sparingly and not merely because there is a likelihood that an alien will make critical remarks about the United States or its policies.

Furthermore, the conferees intend that the "compelling foreign policy interest" standard be interpreted as a significantly higher standard than the general "potentially serious adverse foreign policy consequences standard." In particular, the conferees note that the general exclusion standard in this provision refers only to the "potential" for serious adverse foreign policy consequences, whereas exclusion under the second exception (under which an alien can be excluded because of his beliefs, statements or associations) must be linked to a "compelling" foreign policy interest. The fact that the Secretary of State personally must inform the relevant Congressional Committees when a determination of excludability is made under this provision is a further indication that the conferees intend that this provision be used only in unusual circumstances.

With regard to the second exception, the following include some of the circumstances in which exclusion might be appropriate: when an alien's mere entry into the United States could result in imminent harm to the lives or property of United States persons abroad or to property of the United States government abroad (as occurred with the former Shah of Iran), or when an alien's entry would violate a treaty or international agreement to which the United States is party.

Finally, the conferees intent that, since this legislation repeals both Section 901 and the McGovern Amendment and removes membership in or affiliation with the communist party as a ground for exclusion of nonimmigrants, the current practice under which certain nonimmigrants who are excludable under provisions of the INA, but who benefit from the reforms of Section 901, have been required to go through an "automatic" waiver process, would be discontinued. Instead, aliens who are no longer excludable would simply be able to enter the U.S. (unless any provision of this legislation specifically requires a waiver process).

TOTALITARIAN PARTY MEMBERSHIP OR AFFILIATION

This legislation includes a provision (designated section 212(a)(3)(D) which is designed to modernize the provision in existing law relating to the exclusion of aliens who are members of or affiliated with the Communist party or other totalitarian parties. This provision eliminates membership in or affiliation with such parties as a ground for exclusion of nonimmigrants (though any nonimmigrant who is a spy or terrorist, or who seeks the overthrow of the U.S., would remain excludable under other provisions in this legislation). With regard to immigrants, this provision retains the existing language exempting immigrants whose membership was involuntary, but it amends the "defector" provision under which an alien is required to demonstrate opposition to the doctrines of the party for at least five years, removes the language requiring that the admission of aliens in either category (involuntary membership or defector) be in the public interest, and establishes several new exemptions.

Specifically, under this provision an alien who has terminated his membership in or affiliation with a totalitarian party for at least two years at the time he applies for a visa or to enter the U.S. would not be excludable if such alien is determined not to be a threat to the security of the United States. This provision could apply to aliens from countries like the countries in Eastern Europe which were formerly Soviet Satellite states, but which are no longer controlled by the Communist Party.

In the case of an alien whose involvement was with a totalitarian party which still controls the government of a foreign state at the time of the application for a visa or entry, the exemption would not be available until five years had passed since the termination of membership or affiliation. This second provision could apply to aliens from countries like Cuba, Albania or the Peoples Republic of China, and, again, would only apply if the alien was determined not to be a security threat.

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Finally, there is an exemption for current party members who are seeking to immigrate to the United States and who have certain specified close family relatives in the U.S. Under this exemption, the general ground for exclusion for totalitarian party involvement would be waived, if the required family ties were present, at the discretion of the Attorney General for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, provided that the alien is not a security threat.

It is the intent of the conferees that aliens who would previously have been excludable under section 212(a)(28) because of membership in or affiliation with the Communist party, but who are no longer excludable for that reason because of the changes made in this provision, would not be excludable under the new foreign policy grounds established by this legislation merely because of such membership or affiliation.

TERRORISM

For the purposes of this legislation, the conferees consider terrorist activity to include, but not be limited to, conduct which is prohibited by international conventions relating to terrorism, such as the Convention for the Unlawful Seizure of Aircraft (the Hague, 1970), the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Montreal, 1971), the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons Including Diplomatic Agents (New York, 1973), The Convention Against the Taking of Hostages (New York, 1979), the 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Aviation, and the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation.

Also illustrative of the acts which should be considered terrorist acts for the purpose of this legislation are those which are encompassed within the definition of terrorism contained in Title 22 United States Code, Section 2656f(d). That statute defines terrorism as "premeditated, politically motivated violence perpetrated against noncombatant targets by subnational or clandestine agents."

For the purposes of this legislation, the conferees consider a "terrorist organization" to be one whose leadership, or whose members, with the knowledge, approval or acquiescence of the leadership, have taken part in terrorist activities. In making determinations for the purpose of establishing excludability, the Department of State (or the Immigration Service when appropriate) should take into account the best available information from the intelligence community. A group may be considered a terrorist organization even if it has not conducted terrorist operations in the past several years, but there is reason to believe it still has the capability and inclination to conduct such operations.

TECHNOLOGY TRANSFER

This title includes a provision (designated 212(a)(3)(A)(i)), which is aimed at preventing aliens from obtaining sensitive information or technology which could compromise the national security. In addition to permitting the exclusion or imposition of restrictions on

cial decision or pending litigation. Our expression of intent to address these issues in the future is not intended to affect the course of such litigation.

LABOR SHORTAGE STUDIES

The Senate bill contained a provision to direct the Secretary of Labor to publish and widely distribute an annual list of labor shortages.

The House amendment contained no comparable provision.

The Conference substitute does not contain the Senate provision. However, the Conferees direct the Secretary of Labor to publish and widely distribute an annual list of labor shortages, including such information as the intensity of each labor shortage, the supply and demand of workers in occupations affected by the shortage industrial and geographic concentration of the shortage, in addition to wages and entry requirements and job content for occupations affected by the shortage.

The Conferees direct the Secretary of Labor to widely distribute the annual list of labor shortages and related information to parties and agencies such as students and job applicants, vocational educators, employers, labor unions, guidance counselors, administrators of programs established under the Job Training and Partnership Act, job placement agencies, and appropriate Federal and State agencies. The Conferees also direct the Secretary of Labor to make recommendations to identify labor shortages by region, State, and local areas.

At the time that the Secretary of Labor issues the annual publication of a labor shortage list, the Conferees direct the Secretary to prepare and submit to the appropriate Committees of Congress a report that describes the actions taken by the Department during the previous 12 months to reduce labor shortages, and specifies a plan of action to be taken by the Secretary to ensure that federally funded employment, education, and training agencies reduce national labor shortages that have been identified and recommendations for change.

In directing, the Conferees intend to facilitate the matching of workers to areas in which America has its most pressing labor-skill requirements and to ensure that American workers benefit from information about labor shortage occupations that is going to enable foreign workers with special skills to come to America.

From the Committee on the Judiciary, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

JACK BROOKS,
BRUCE A. MORRISON,
BARNEY FRANK,
CHARLES E. SCHUMER,
HOWARD L. BERMAN,
R.L. MAZZOLI,
HAMILTON FISH,
LAMAR SMITH,
BILL MCCOLLUM,